

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO SUMMARY ORDERS FILED AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY THIS COURT'S LOCAL RULE 32.1 AND FEDERAL RULE OF APPELLATE PROCEDURE 32.1. IN A BRIEF OR OTHER PAPER IN WHICH A LITIGANT CITES A SUMMARY ORDER, IN EACH PARAGRAPH IN WHICH A CITATION APPEARS, AT LEAST ONE CITATION MUST EITHER BE TO THE FEDERAL APPENDIX OR BE ACCOMPANIED BY THE NOTATION: (SUMMARY ORDER). A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF THAT SUMMARY ORDER TOGETHER WITH THE PAPER IN WHICH THE SUMMARY ORDER IS CITED ON ANY PARTY NOT REPRESENTED BY COUNSEL UNLESS THE SUMMARY ORDER IS AVAILABLE IN AN ELECTRONIC DATABASE WHICH IS PUBLICLY ACCESSIBLE WITHOUT PAYMENT OF FEE (SUCH AS THE DATABASE AVAILABLE AT [HTTP://WWW.CA2.USCOURTS.GOV/](http://www.ca2.uscourts.gov/)). IF NO COPY IS SERVED BY REASON OF THE AVAILABILITY OF THE ORDER ON SUCH A DATABASE, THE CITATION MUST INCLUDE REFERENCE TO THAT DATABASE AND THE DOCKET NUMBER OF THE CASE IN WHICH THE ORDER WAS ENTERED.

At a stated term of the United States Court of Appeals
for the Second Circuit, held at the Daniel Patrick Moynihan
United States Courthouse, 500 Pearl Street, in the City of
New York, on the 21st day of August, two thousand seven.

PRESENT:

HON. ROGER J. MINER,
HON. PIERRE N. LEVAL,
HON. CHESTER J. STRAUB,
Circuit Judges.

JING ZHU CHEN,
Petitioner,

v.

ALBERTO GONZALES, ATTORNEY GENERAL,
Respondent.

06-4687-ag
NAC

FOR PETITIONER: Fengling Liu, New York, New York.

FOR RESPONDENT: Michael J. Sullivan, United States
Attorney for the District of

**Massachusetts, Gina Walcott-Torres,
Assistant United States Attorney,
Boston, Massachusetts.**

UPON DUE CONSIDERATION of this petition for review of a decision of the Board of Immigration Appeals ("BIA"), it is hereby ORDERED, ADJUDGED, AND DECREED, that the petition for review is DENIED.

Jing Zhu Chen, a citizen of the People's Republic of China, seeks review of a September 27, 2006 order of the BIA affirming the May 19, 2005 decision of Immigration Judge ("IJ") Noel Ann Brennan denying Chen's applications for asylum, withholding of removal, and relief under the Convention Against Torture ("CAT"). *In re Jing Zhu Chen*, No. A97 966 117 (B.I.A. Sept. 27, 2006), *aff'g* No. A97 966 117 (Immig. Ct. N.Y. City May 19, 2005). We assume the parties' familiarity with the underlying facts and procedural history of the case.

When the BIA issues an opinion that fully adopts the IJ's decision, we review the IJ's decision. *See, e.g., Chun Gao v. Gonzales*, 424 F.3d 122, 124 (2d Cir. 2005); *Secaida-Rosales v. INS*, 331 F.3d 297, 305 (2d Cir. 2003). We review the agency's factual findings, including adverse credibility determinations, under the substantial evidence standard,

1 treating them as "conclusive unless any reasonable
2 adjudicator would be compelled to conclude to the contrary."
3 8 U.S.C. § 1252(b)(4)(B); see, e.g., *Dong Gao v. BIA*, 482
4 F.3d 122, 126 (2d Cir. 2007). However, we will vacate and
5 remand for new findings if the agency's reasoning or its
6 fact-finding process was sufficiently flawed. See *Cao He*
7 *Lin v. U.S. Dep't of Justice*, 428 F.3d 395, 406 (2d Cir.
8 2005).

9 Upon our review of the record, we conclude that the
10 IJ's denial of Chen's asylum and withholding of removal
11 applications on the basis of an adverse credibility finding
12 is supported by substantial evidence. As an initial matter,
13 the IJ observed that Chen's "overall demeanor did not
14 bespeak someone who had lived through the events he
15 described." Chen "was hesitant, often repeating questions,
16 and pausing." As a fact-finder who assesses testimony
17 together with demeanor, the IJ is in the best position to
18 discern whether the witness is truthful. See *Majidi v.*
19 *Gonzales*, 430 F.3d 77, 81 n.1 (2d Cir. 2005). The IJ also
20 properly noted that Chen was unfamiliar with his wife's IUD
21 booklet and that he was unable to provide any detail about
22 her alleged sterilization.

1 In addition, the IJ reasonably relied on
2 inconsistencies in the record regarding Chen's wife's
3 alleged abortion. For instance, the IJ properly noted that,
4 when Chen was questioned about the issuance of the abortion
5 certificate he submitted, he testified inconsistently
6 regarding who had given the certificate to his wife. Chen
7 also provided inconsistent testimony regarding the date of
8 his wife's alleged abortion. Chen's failure to provide
9 consistent testimony regarding his wife's abortion and the
10 abortion certificate goes to the heart of his asylum claim
11 that he was persecuted on account of his violation of the
12 family planning policy. Thus, the inconsistencies
13 substantiate the IJ's adverse credibility finding. See
14 *Latifi v. Gonzales*, 430 F.3d 103, 105 (2d Cir. 2005);
15 *Secaida-Rosales*, 331 F.3d at 308-09. Having found that the
16 adverse credibility finding is supported by substantial
17 evidence, we need not decide whether petitioner's claim
18 could survive *Shi Liang Lin v. U.S. Dep't of Justice*, ---
19 F.3d ----, Nos. 02-4611-ag, 02-4629-ag, 03-40837-ag, 2007 WL
20 2032066 (2d Cir. July 16, 2007) (en banc).

21 Because Chen was unable to show the objective
22 likelihood of persecution needed to establish a claim for

1 asylum, he was necessarily unable to meet the higher
2 standard required to succeed on a claim for withholding of
3 removal. *See Paul v. Gonzales*, 444 F.3d 148, 156 (2d Cir.
4 2006).

5 Although Chen summarizes his testimony regarding his
6 claim of persecution on the basis of his religion, he does
7 not make any argument in connection with the IJ's decision
8 denying his application on that basis. Therefore, because
9 Chen did not meaningfully challenge the IJ's decision in
10 this respect, it is deemed waived. *See Yueqing Zhang v.*
11 *Gonzales*, 426 F.3d 540, 546 n.7 (2d Cir. 2005) (arguments
12 insufficiently developed in petitioners' briefs are deemed
13 waived).

14 Because Chen also does not meaningfully address the
15 agency's denial of his application for CAT relief in his
16 brief to this Court, he has also waived any challenge to the
17 denial of that relief. *See id.* Finally, Chen does not
18 challenge the BIA's finding regarding the denial of his
19 motion to reconsider before this Court; thus, it too is
20 deemed waived. *See id.*

21 For the foregoing reasons, the petition for review is
22 DENIED. Having completed our review, petitioner's pending

1 motion for a stay of removal in this petition is DISMISSED
2 as moot.
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4

5 FOR THE COURT:
6 Catherine O'Hagan Wolfe, Clerk
7

8 By: _____
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